

LAW OFFICES OF P. STERLING KERR

ATTORNEYS AT LAW

2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074
Telephone: (702) 451-2055 Facsimile: (702) 451-2077

P. STERLING KERR, ESQ.
Nevada Bar No. 3978
GEORGE E. ROBINSON, ESQ.
Nevada Bar No. 9667
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Telephone No. (702) 451-2055
Facsimile No. (702) 451-2077
Email: sterling@sterlingkerrlaw.com
Email: george@sterlingkerrlaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

INTERNATIONAL MARKETS LIVE,
INC., a New York corporation;
CHRISTOPHER TERRY, an individual;

Plaintiffs,

v.

SCOTT CARNEY, an individual; ETHAN
VANDERBUILT, an individual;

Defendants.

Case No.: 2:18-cv-00187-JAD-GWF

**OPPOSITION TO DEFENDANT
SCOTT CARNEY'S MOTION TO
DISMISS PLAINTIFF'S AMENDED
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION,
IMPROPER VENUE, AND TO
DISMISS FOR FAILURE TO STATE A
CLAIM, OR ALTERNATIVELY TO
TRANSFER**

COMES NOW Plaintiffs INTERNATIONAL MARKETS LIVE (hereafter "IML")
and CHRISTOPHER TERRY, by and through their attorneys the Law Offices of P. Sterling
Kerr, and hereby oppose Defendant SCOTT CARNEY's Motion to Dismiss Pursuant to Fed.
R. Civ. P. 12(b)(2), 12(b)(3) and 12(b)(6).

///

///

1 This Opposition is made and based upon all the papers and pleadings on file herein,
2 the Points and Authorities attached hereto, and such oral argument as may be adduced at a
3 hearing of this matter.

4 DATED this 21st day of June, 2018.

5 LAW OFFICES OF P. STERLING KERR

6
7 By: /s/ George E. Robinson
8 P. STERLING KERR, ESQ.
9 Nevada Bar No. 3978
10 TAYLOR SIMPSON, ESQ.
11 Nevada Bar No. 13956
12 2450 St. Rose Parkway, Suite 120
13 Henderson, Nevada 89074

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 The Court must deny CARNEY'S Motion to Dismiss because CARNEY has
17 sufficient contacts with Nevada for the Court to have specific personal jurisdiction over these
18 claims, because venue is proper, and because the claims have been properly pled as to fulfill
19 the requirements of FRCP 8(a)(2).¹ CARNEY wants this Court to believe that he can sit
20 behind the protection of his computer screen and spread across the internet defamatory
21 statements alleging Plaintiffs have engaged in criminal acts and unethical business decisions
22 without consequence in order to enhance his own business ventures.

23 CARNEY repeatedly makes false statements in his Motion that he "did not perform
24 any of the alleged acts in, direct his conduct to, or target the State of Nevada." See Motion
25 to Dismiss at pgs. 2, 4, 5. Defendant CARNEY travelled to Las Vegas regarding the subject
26 matter in question. Plaintiffs specified in the Amended Complaint that the tortious acts in
27

28

¹ Plaintiffs do not dispute that this Court does not have general jurisdiction over Defendant CARNEY.

1 question were posted on the internet, and that the tortious statements were directed toward
2 the Plaintiffs including TERRY who lives in the State of Nevada. The Amended Complaint
3 states on page 2:

4 8. In February of 2016, CARNEY travelled to Las Vegas,
5 Nevada to meet with Plaintiffs regarding Forex trading techniques.

6 9. While in Las Vegas, Nevada, TERRY and CARNEY record
7 online videos regarding Forex trading from TERRY's Las Vegas
8 residence.

9 10. Since this time, the relationship between Plaintiffs and
10 CARNEY has degraded to CARNEY publishing tortious statements
11 regarding Plaintiffs on his websites and social media.

12 Pursuant to the case law, the above allegations found in the Amended Complaint along
13 with the statements quoted from CARNEY's Facebook page are the only factual assertions
14 necessary to establish specific personal jurisdiction of this Court over CARNEY. Venue is
15 proper in the District of Nevada for the same reasons that jurisdiction is proper, and the case
16 should not be dismissed or transferred due to venue concerns. Therefore, this Court should
17 deny Plaintiff's Motion to Dismiss or Transfer this case as this case was properly filed in the
18 District of Nevada.

19 **II. ANALYSIS**

20 **A. MOTION TO DISMISS STANDARD**

21 According to FRCP 12(b)(6) a court may dismiss a complaint for "failure to state a claim
22 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must
23 provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief."
24 FRCP 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does
25 not require detailed factual allegations, it demands more than "labels and conclusions or a
26 formulaic recitation of the elements of a cause of action. . . ." *Ashcroft v. Iqbal*, 556 U.S. 662,
27 678 (2009) (citation omitted) (internal quotations omitted). "Factual allegations must be enough
28

1 to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to
2 dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is
3 plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted).

4 In *Iqbal*, the Supreme Court clarified the two-step approach to apply when considering
5 motions to dismiss. First, the court must accept as true all well-pled factual allegations in the
6 complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* Mere
7 recitals of the elements of a cause of action, supported only by conclusory statements, do not
8 suffice. *Id.* Second, the court must consider whether the factual allegations in the complaint
9 allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's
10 complaint alleges facts that allow the court to draw a reasonable inference that the defendant is
11 liable for the alleged misconduct. *Id.* at 678.

13 Where the complaint permits the court to infer more than the mere possibility of misconduct,
14 the complaint has "alleged - but not shown - that the pleader is entitled to relief." *Id.* at 679
15 (internal quotations omitted). When the allegations in a complaint have crossed the line from
16 conceivable to plausible, plaintiff's claim must survive. *See Twombly*, 550 U.S. at 570.

18 A federal court must apply the substantive law of the forum state when a federal question
19 is not involved. *See Cornett v. Gawker media, LLC*, 2014 WL 2863093, at 5 (D. Nev. June 23,
20 2014); see also *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78-80, 58 S.Ct. 817, 82 L.Ed.1188
21 (1938). Likewise, when "federal subject matter jurisdiction is based on diversity, courts apply
22 the law of the forum state to determine which state's statute of limitations to apply." *Id.* (citing
23 to *Guaranty Trust Co. v. York*, 326 U.S. 99, 110 (1945); see also *Flowers v. Carville*, 310 F.3d
24 1118, 1123 (9th Cir. 2002)). As such Nevada substantive law applies here.

26 As to the request to dismiss pursuant to FRCP 12(b)(2) for lack of personal jurisdiction,
27 "[a]t the motion to dismiss stage, a plaintiff is generally required only to make out a prima facie
28 showing of personal jurisdiction to overcome a 12(b)(2) motion." *See Glencore Grain*

1 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1119 (9th Cir. 2002).

2 B. THE DISTRICT COURT OF NEVADA HAS SPECIFIC PERSONAL
 3 JURISDICTION OVER THE CLAIMS MADE AGAINST CARNEY IN
 4 THIS CASE

5 This Court has specific personal jurisdiction over the claims alleged in the Amended
 6 Complaint pursuant to the Nevada long arm statute, and the recent federal case law outlining
 7 the requirements of personal jurisdiction regarding allegations of tortious activity by a
 8 defendant on the internet. As stated in CARNEY's Motion, "Where, as here, no federal statute
 9 authorizes personal jurisdiction, the district court applies the law of the state in which the court
 10 sits. Fed. R. Civ. P. 4(k)(1)(A); *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th
 11 Cir.1998)." *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F. 3d 1218 - Court of Appeals,
 12 9th Circuit 2011. The federal court has analyzed the Nevada statute, "Nevada's long-arm statute
 13 permits the exercise of jurisdiction to the same extent as the Constitution. Nev.Rev.Stat. §
 14 14.065 (2001). Hence, we consider only the constitutional principles of due process which
 15 require that RII have minimum contacts with Nevada 'such that the maintenance of the suit
 16 does not offend traditional notions of fair play and substantial justice.' *Int'l Shoe Co. v.*
 17 *Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)." *Rio Properties, Inc. v. Rio*
 18 *Intern. Interlink*, 284 F. 3d 1007 (9th Cir. 2002).

19
 20 The Ninth Circuit uses an analysis of three elements to determine whether personal
 21 jurisdiction over a defendant exists, "(1) The non-resident defendant must *purposefully direct*
 22 *his activities* or consummate some transaction with the forum or resident thereof; *or* perform
 23 some act by which he *purposefully avails himself* of the privilege of conducting activities in the
 24 forum, thereby invoking the benefits and protections of its laws; (2) the claim must be
 25 one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise
 26 of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.
 27
 28

1 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th
2 Cir.1987) (emphases added)); *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218
3 (9th Cir. 2011).

4 The *Mavrix* case goes on to discuss the first factor in the context of a tort case like this
5 one. “The ‘effects’ test, which is based on the Supreme Court’s decision in *Calder v. Jones*,
6 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), requires that ‘the defendant allegedly
7 must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing
8 harm that the defendant knows is likely to be suffered in the forum state.’ *Brayton Purcell*, 606
9 F.3d at 1128 (quoting *Yahoo!*, 433 F.3d at 1206). *Id.* at 1228.

10 Here, the Amended Complaint quotes CARNEY’s Facebook page which states that
11 CARNEY is explicitly targeting “Chris” and #ChrisTerry, referring to TERRY, and explicitly
12 talking about Las Vegas. See Amended Complaint at p. 2-3. It is alleged in the Amended
13 Complaint CARNEY knows that TERRY lives in Nevada because CARNEY was making
14 videos at TERRY’s residence. *Id.*

15 The *Mavrix* case is important to discuss in this situation because there is an analysis of
16 personal jurisdiction in the context of website and internet activity. The *Mavrix* states that the
17 defamatory acts must be “‘expressly aimed at the forum state’ . . . In prior cases, we have
18 struggled with the question whether tortious conduct on a nationally accessible website is
19 expressly aimed at any, or all, of the forums in which the website can be viewed. See, e.g.,
20 *Brayton Purcell*, 606 F.3d at 1129-31; *Pebble Beach*, 453 F.3d at 1156-58; *Rio Props., Inc. v.*
21 *Rio Int’l Interlink*, 284 F.3d 1007, 1019-21 (9th Cir.2002); *Panavision Int’l, L.P. v. Toeppen*,
22 141 F.3d 1316, 1321-22 (9th Cir.1998); *Cybersell*, 130 F.3d at 417. On the one hand, we have
23 made clear that “maintenance of a passive website alone cannot satisfy the express aiming
24 prong.” *Brayton Purcell*, 606 F.3d at 1129. On the other, we have held that “operating even a
25 passive website in conjunction with ‘something more’ — conduct directly targeting the forum
26
27
28

— is sufficient." *Rio Props.*, 284 F.3d at 1020. In determining whether a nonresident defendant has done "something more," we have considered several factors, including the interactivity of the defendant's website, e.g., *Pebble Beach*, 453 F.3d at 1153-54, 1158; *Cybersell*, 130 F.3d at 417-20; the geographic scope of the defendant's commercial ambitions, e.g., *Pebble Beach*, 453 F.3d at 1156-58; *Rio Props.*, 284 F.3d at 1020-21; and whether the defendant "individually targeted" a plaintiff known to be a forum resident, e.g., *Brayton Purcell*, 606 F.3d at 1129; *Pebble Beach*, 453 F.3d at 1156-57; *Panavision*, 141 F.3d at 1321-22.

Here, there are personal statements about TERRY that attack his personal character and integrity. TERRY is a resident of Nevada. CARNEY continues to make clear misstatements in his Motion to Dismiss regarding the facts of the Amended Complaint as if CARNEY did not bother to read the pleading. CARNEY states that "Carney's activities, as alleged or otherwise, do not relate to, do not target, nor are directed toward Nevada." *See* Motion to Dismiss at p. 4. Further stating, "none of the actions he is accused of committing were directed towards Nevada." *See* Motion to Dismiss at p. 5. The language of the Amended Complaint and CARNEY's online statements obviously contradict this statement. On pages 2 and 3 of the Amended Complaint, Plaintiffs allege:

17. On or about March 10, 2018, CARNEY posts, "Harmonic Traitor Update: iMarketsLive has filed a \$4million defamation lawsuit against myself and 3 other individuals. They know that I have a \$100 mil ip civil suit in the works! But Chris, BIG MISTAKE! These deceit that you so easily employ to grow your scheme in the name of my work is over! I am filing both a SLAAP and countersuit, just in time for the big iml Vegas Expo. If you an iml affiliate, DELETE ME NOW and the REAL Harmonic TRADERS can stay tuned. #HarmonicTakeover #imarketslive #ChrisTerry #harmonictraitors #GetYopopcorn"

18. On or about April 4, 2018, CARNEY posts, "Just recd 2nd complaint from imarketslive - serving me papers twice on their \$4million defamation lawsuit. At this point, it's harassment. If you are in iml, iml group or affiliated or know someone who is, you need to know that your so-called leaders are suing the very guy (ME) who created the work they are copying. If you have any respect for me,

my work and most important, YOURSELF, LEAVE IML NOW!
Any iml member or rep that sends me a confirmed cancellation of
imarketslive membership will get GOLD MEMBERSHIP and
SOFTWARE FREE 30-days. Send to ht@ht.com
#HarmonicTakeover #Dryland #HarmonicKarma #CFTCBitch
#30daystilmarketslivetakedown”

19. On or about March 16, 2018, CARNEY posts, “What's
#HarmonicTakeover? The #iml Titanic! Have fun rising in Vegas as
you hit the iceberg while I watch from dry land! 30Days.”

Plaintiffs’ allegations contain quotes from CARNEY’s Facebook page which state that
CARNEY is explicitly targeting “Chris” and #ChrisTerry, referring to TERRY, and explicitly
talking about Las Vegas. It is alleged in the Amended Complaint CARNEY knows that TERRY
lives in Nevada because CARNEY was making videos at TERRY’s residence.² It is
incontrovertible and a nonsensical claim that the conduct alleged in the Amended Complaint is
not directed towards TERRY and Nevada. The mere omission of the paragraphs in the
Amended Complaint for his Motion to Dismiss does not make the allegations disappear from
the pleading.

C. VENUE IS PROPER IN THE DISTRICT OF NEVADA

The law suit should not be dismissed pursuant to FRCP 12(b)(3) as venue is proper in
the state of Nevada. 28 U.S.C. 1391(b) states:

(b) Venue in General.—A civil action may be brought in—

- (1) a judicial district in which any defendant resides, if all
defendants are residents of the State in which the district is
located;
- (2) a judicial district in which a substantial part of the events or
omissions giving rise to the claim occurred, or a substantial part
of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be
brought as provided in this section, any judicial district in which
any defendant is subject to the court’s personal jurisdiction with
respect to such action.

² These videos are readily assessable on the internet. One video can be found at
https://www.youtube.com/watch?v=0_5eKdhDnPM.

1 Pursuant to the statute, venue in the District of Nevada is proper. 28 U.S.C 1391(b)(1)
2 does not apply as the Defendants in this case are not residents of the same state, CARNEY and
3 VANDERBUILT are from Florida and California respectively. 28 U.S.C 1391(b)(2) does not
4 necessarily apply either because the defamatory statements leading to the claims were posted
5 on the internet. If 28 U.S.C 1391(b)(2) does apply, then Nevada would be proper as some of
6 the statements were purposefully and explicitly directed towards a Nevada resident. Pursuant
7 to 28 U.S.C 1391(b)(3), this claim is proper in the District of Nevada as this Court has personal
8 jurisdiction over CARNEY because of the actions taken by CARNEY in coming to the state of
9 Nevada regarding the subject matter in question and his tortious statements directed towards
10 TERRY and the state of Nevada. A through analysis of jurisdiction was presented above.

12 D. THE EVALUATION OF THE FACTORS REGARDING VENUE
13 INDICATE THAT THIS CASE SHOULD NOT BE TRANSFERRED TO
14 THE SOUTHERN DISTRICT OF FLORIDA

15 This Court should deny CARNEY's request to transfer this case to Florida pursuant to
16 28 U.S.C 1404. CARNEY should not be able to come to Nevada and direct tortious statements
17 against a person who resides in the state of Nevada to boost his own business venture, and then
18 ask the Court to transfer the case for his convenience.

19 The pertinent language of 28 U.S.C. 1404 states "(a) For the convenience of parties and
20 witnesses, in the interest of justice, a district court may transfer any civil action to any other
21 district or division where it might have been brought or to any district or division to which all
22 parties have consented." The federal court has expounded on 28 U.S.C. 1404 stating:

23 Under § 1404(a), the district court has discretion "to adjudicate
24 motions for transfer according to an individualized, case-by-case
25 consideration of convenience and fairness." A motion to transfer
26 venue under § 1404(a) requires the court to weigh multiple factors
27 in its determination whether transfer is appropriate in a particular
28 case. *Id.* For example, the court may consider: (1) the location where
the relevant agreements were negotiated and executed, (2) the state
that is most familiar with the governing law, (3) the plaintiff's choice
of forum, (4) the respective parties' contacts with the forum, (5) the

1 contacts relating to the plaintiff's cause of action in the chosen
2 forum, (6) the differences in the costs of litigation in the two forums,
3 (7) the availability of compulsory process to compel attendance of
4 unwilling non-party witnesses, and (8) the ease of access to sources
5 of proof. Additionally, the presence of a forum selection clause is a
6 "significant factor" in the court's § 1404(a) analysis. A forum
7 selection clause, however, is not dispositive. *Jones v. GNC*
8 *Franchising, Inc.*, 211 F. 3d 495 (9th Cir. 2000) (internal citations
9 omitted).

10 From the start of his Motion to Dismiss, CARNEY attempts to falsely garner sympathy
11 from this Court, stating numerous times that he is disabled. CARNEY has been in a wheel chair
12 for decades, and this was the case when he travelled to Las Vegas to meet with TERRY, and
13 throughout their relationship. It is not a recent occurrence which has disabled him, and at all
14 times relevant to this case, CARNEY has been in a wheel chair.

15 In this case, CARNEY came to Nevada to TERRY's residence and produced videos at
16 TERRY's residence regarding the FOREX trading which the defamatory statements relate to.
17 CARNEY posts (publishes) defamatory statements for the world to see on Facebook. Moreover,
18 CARNEY intentionally directed these statements against a Nevada resident and included
19 TERRY'S relation to Nevada's in the posts. The governing law is not at issue in this situation
20 as this is not a contract case with a choice of laws provision. CARNEY's legal fees should not
21 be at issue as it appears that CARNEY has chosen a Chicago firm to represent him. This
22 Chicago firm would have to associate with Florida counsel just as it has associated with Nevada
23 counsel. CARNEY nonsensically argues that some of his witnesses are in Washington DC, so
24 the case should be transferred to Florida. Clearly, the problems with Washington DC witnesses
25 and compulsory attendance would be the same if this case was in Washington DC or Nevada.

26 The evaluation of the factors in *Jones* indicates that the case should not be transferred
27 to the Southern District of Florida, therefore the Court should deny Defendant's Motion for
28 Inconvenient Forum.

E. THE CLAIMS IN THE COMPLAINT ARE PROPER AND SHOULD NOT BE DISMISSED PURSUANT TO FRCP 12(b)(6)

None of the four claims made against the CARNEY should be dismissed for failure to state a claim upon which relief can be granted. First, Plaintiffs have properly pled the elements of a defamation claim pursuant to Nevada case law, and this Court should deny the request to dismiss this claim pursuant to FRCP 12(b)(6).

The Court must analyze the Motion to Dismiss with the understanding that the requirement of Plaintiff pursuant to FRCP 8(a)(2) is to provide “a short and plain statement of the claim showing that the pleader is entitled to relief.” Plaintiff has fulfilled this requirement in each of the claims against CARNEY.

As cited in CARNEY’S Motion, “Under Nevada common law, defamation requires ‘(1) a false and defamatory statement of fact by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.’ *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277, 282 (2005).” *Tsao v. Desert Palace, Inc.*, 698 F. 3d 1128 (9th Cir. 2012).

The general allegations section of the First Amended Complaint quote some of the statements in question. CARNEY’s statements state that, amongst other things, Plaintiffs are running a federally illegal scheme and that Plaintiffs’ business is going to fail or “sink like the Titanic.” *See* Amended Complaint at p. 2-3. In the Amended Complaint, Plaintiffs allege that these statements are false. *Id.* at 4. Additionally, these statements are considered defamation per se pursuant to Nevada case law as they impute a criminal act and lack of fitness for business.

Certain classes of defamatory statements are considered so likely to cause serious injury to reputation and pecuniary loss that these statements are actionable without proof of damages. The four types of slander historically designated as defamatory per se are false statements made involving: (1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the person's lack of fitness for trade, business, or profession; and (4) imputing serious sexual misconduct. No proof of any actual harm to

1 reputation or any other damage is required for the recovery of
2 damages for these four kinds of slander. "Otherwise stated, proof of
3 the defamation itself is considered to establish the existence of some
4 damages, and the jury is permitted, without other evidence, to
5 estimate their amount." *K-Mart Corporation v. Washington*, 866 P.
6 2d 274 (Nev. 1993).

7 The statements in question were published on the internet to third parties. *Id.* Damages
8 for defamation per se are actionable without proof of damages. *See Id.* Therefore, the
9 defamation claims have been properly noticed in the Amended Complaint against CARNEY.

10 The evaluation of the defamation claim is very similar to the Trade Libel claim. All of
11 the elements of the trade libel claim have been properly pleaded in the Amended Complaint.
12 For trade libel, it is necessary to plead that the defendant published a statement about Plaintiffs'
13 business; which disparages the business; the statement was false; and defendant was at least
14 negligent in making the statement. *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006);
15 *Chowdry v. NLVH, Inc.*, 109 Nev. 478, 851 P.2d 459 (1993). These elements were covered in
16 the paragraphs above, and this claim is a valid one which should not be dismissed pursuant to
17 FRCP 12(b)(6).

18 The tort claims of Tortious Interference with Contractual Relations and Tortious
19 Interference with Prospective Economic Advantage claims should not be dismissed as they have
20 been properly pled in the Amended Complaint. As for Tortious Interference with Contractual
21 Relations, the Amended Complaint states:

22 Plaintiff IML had contractual relationships with customers and
23 individual representatives who desired participate in receiving
24 educational products for Forex markets. Defendants know of these
25 relationships. Defendants spread false information and affirmatively
26 filed false complaints with regulators with the intent of disrupting
27 Plaintiff's relationships with its customers. Defendants' conduct
28 was not legally justified. As a direct and proximate result of
Defendants' interference with IML's contractual relationships,
Plaintiff has been harmed in amount in excess of one million dollars
(\$1,000,000.00). *See* Amended Complaint at p. 5.

Plaintiff IML has alleged valid and existing contracts with representatives regarding

1 Forex educational products, Defendant knew of the contracts, and the contracts were disrupted.
2 All of the required elements are in the claim for relief, and Defendant CARNEY's motion
3 should be denied.

4 CARNEY asks the Court to dismiss the Tortious Interference with Economic Advantage
5 claim as well, but, like his request regarding the previous claim of Tortious Interference with
6 Contractual Relations, his request is without merit. CARNEY states that Plaintiffs failed to
7 allege what prospective relationship has been interfered with when the face of the Amended
8 Complaint states that IML "had prospective contractual relationships with customers and
9 individual representatives who desired [to] participate in receiving educational products for
10 Forex markets." *Id.* at p. 6. The Amended Complaint states that Carney knew about the
11 prospective relationships, intended to prevent them, and the Defendants suffered damage as a
12 result. This is all that is necessary pursuant to the notice pleading requirements of FRCP 8(a)(2),
13 and the request to dismiss should be denied.
14

15 F. LEAVE TO AMEND SHOULD BE GRANTED IN ORDER TO AMEND
16 PERCEIVED DEFICIENCIES IN THE AMENDED COMPLAINT

17 Alternatively, FRCP 15(a) directs that leave shall be freely given to amend a pleading
18 when justice so requires. Insofar as this Court finds the cause of action in Plaintiffs' Amended
19 Complaint to be improperly pled, Plaintiffs requests leave of this Court to amend the Complaint
20 accordingly.
21

22 ///

23 ///

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny CARNEY's Motion to Dismiss in its entirety as it is without merit.

DATED this 21st day of June, 2018.

LAW OFFICES OF P. STERLING KERR

By: /s/ George E. Robinson
P. STERLING KERR, ESQ.
Nevada Bar No. 3978
GEORGE E. ROBINSON, ESQ.
Nevada Bar No. 9667
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074

CERTIFICATE OF SERVICE

The undersigned hereby certifies on June 21, 2018, a true and correct copy of
**OPPOSITION TO DEFENDANT SCOTT CARNEY'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT FOR LACK OF PERSONAL
JURISDICTION, IMPROPER VENUE, AND TO DISMISS FOR FAILURE TO STATE
A CLAIM, OR ALTERNATIVELY TO TRANSFER** was served to the following at their
last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

 X **BY E-MAIL AND/OR ELECTRONIC MEANS:** addressees (s)
having consented to electronic service, I via e-mail, Electronic
Service through the Court's electronic filing system, or other
electronic means to the e-mail address(es) of the addressee(s).

Adam Wolek
Taft Stettinius & Hollister
111 E. Wacker Drive, Suite 2800
Chicago, IL 60601
awolek@taftlaw.com

Daniel McNutt
McNutt Law Firm
625 South 8th St.
Las Vegas, NV 89101
drm@mcnuttlawfirm.com

/s/ Lisa Peters

An employee of the LAW OFFICES OF
P. STERLING KERR